IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 3233 of 2005

Between:

1 B.Uday Kiran, S/o.Sudheer Kumar,
R/o.Hyderabad.
2 P.Vijay Shanker, S/o.P.Naga Bhushanam,
R/o.Hyderabad.

..... PETITIONERS

AND

1 NTR University of Health Services, Vijayawada rep. through its Registrar.
2 Osmania Medical College, Hyderabad rep.by its Principal.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ of certiorari to call for the records by quashing the impugned proceeding No.E1(c)/04919/04 dated 27-1-2005 is illegal, arbitrary and violative of Article 14, 16, 20(3) of Constitution of India and also violative of principles of Natural Justice and direct the respondents to declare the results of the petitioners Final MBBS Part II (New Regulations) Examinations held in October/November 2004.

Counsel for the Petitioner:MR.L.PRABHAKAR REDDY

Counsel for the Respondent No.1: (STANDING COUNSEL FOR NTR UNIVERSITY OF HEALTH SERVICES) MR.D.V.NAGARJUNA BABU

Counsel for the Respondent No.2: NONE APPEARED

The Court made the following O R D E R:

This writ petition has been filed by the petitioners, who are two in number, with a prayer to issue a writ of Certiorari to call for the records relating to the impugned proceedings No.EI(C)/04919/04, dated 27.01.2005, and declare the same as illegal, arbitrary and violative of Article 14, 16 and 20(3) of the Constitution of India.

The facts in brief are that the petitioners appeared for final year MBBS Part II Examinations held in October/November, 2004 with Hall ticket Nos.9907195 and 9907209 respectively. When the petitioners were appearing for the last theory examination on 29.10.2004, the invigilator checked the petitioners and found some material from their pockets. The petitioners, thereafter, were served with notice dated 27.12.2004 alleging that flying squad collected some written material from them. The petitioners submitted explanation stating that the allegations in the show cause notice were incorrect and as a matter of fact, they themselves handed over some papers to the invigilator within two minutes from the commencement of the examination and who inturn, handed over the same to the flying squad who came at about 9.05 A.M. on that day. Reply was considered by respondent-University. On 27.01.2005, petitioners were informed that as per the resolution of the Disciplinary Committee and as per the Standing Orders of the N.T.R.Univery of Health Sciences, the petitioner are disqualified from appearing in any University examination for a period of one year including September/October, 2004 examination as punishment for use of unfair means during examinations.

Heard the learned counsel for the petitioners and the learned standing counsel

for the respondents.

Both the petitioners were found to be in possession of some material. It is the version of the petitioners that they handed over the written material to the invigilator within two minutes from the commencement of the examination. Admittedly, the material found in possession of the petitioners was in no way connected to the examination scheduled on that day. This fact has been taken into note by the Disciplinary Committee. The remarks made by the Disciplinary Committee reads as follows:

> "Found guilty of having written material on hall ticket in the examination hall. The available evidence does not prove that he has actually indulged in copying"

A similar question came up for consideration before the Division Bench of this Court in W.A.Nos.643 and 651 of 2001 (C.Sarnath Vs. NTR University of Health Sciences, Vijayawada) dated 25.03.2005, wherein it has been held that mere possession of the material, which is not found to be relevant, would not amount use of unfair means and the candidate cannot be punished. The propositions of law laid down in the cited decision is squarely applicable to the facts of the case.

In view of the settled position of law, the punishment imposed on the petitioners cannot be sustained. Accordingly, the writ petition is allowed. The respondents are directed to declare the results of the petitioners. No order as to costs.

18.07.2005

Note:CC in one week

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That Rule Nisi has been made absolute as above.

Witness the Hon’ble Sri Bilal Nazki, The Acting Chief Justice on this Monday, the Eighteenth Day of July, Two thousand and five.

REGISTRAR

To

1 The Registrar, NTR University of Health Services, Vijayawada.
2 The Principal, Osmania Medical College, Hyderabad.

3 2 CD copies

4 1 CC to MR.PRABHAKAR REDDY

*Form-NIC-OGS/WP{**JA**}*